



PUBLIC NOTICE

Federal Communications Commission
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FCC 05-87

Released: April 22, 2005

Federal Communications Commission Seeks Comment on Initial Regulatory Flexibility Analysis in Telephone Number Portability Proceeding

CC Docket No. 95-116

Comment Date: 30 days after publication in the Federal Register

Reply Comment Date: 45 days after publication in the Federal Register.

On March 11, 2005, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission the *Intermodal Order*, 18 FCC Rcd 23697 (2003), concerning porting between wireline and wireless carriers. See *United States Telecom Ass'n v. FCC*, 400 F.3d 29 (D.C. Cir. 2005). The Court determined that the Commission had failed to prepare a Final Regulatory Flexibility Analysis regarding the impact of the *Intermodal Order* on small entities, as defined by the Regulatory Flexibility Act (RFA), which the Court found to have been required by the RFA, 5 U.S.C. § 604. The Court accordingly directed the Commission to prepare the required Final Regulatory Flexibility Analysis, and stayed future enforcement of the *Intermodal Order* "only as applied to carriers that qualify as small entities under the RFA" until the agency prepares and publishes that analysis. 400 F.3d at 43.

In order to prepare to comply with the Court's direction, we hereby seek comment on the attached Initial Regulatory Flexibility Analysis (IRFA) (see Appendix A). As indicated above, comments are due 30 days after publication of this Public Notice in the Federal Register, and replies, if any, are due 45 days after Federal Register publication. The specific IRFA comments will assist us in preparing a Final Regulatory Flexibility Analysis in connection with the *Intermodal Order* and in determining whether to modify the intermodal porting rules with respect to their application to small entities in light of the requirements of the RFA. For the convenience of commenting parties, we attach the *Intermodal Order* as Appendix B.

This is a "permit but disclose" proceeding pursuant to § 1.1206 of the Commission's Rules.¹ Ex parte presentations that are made with respect to the issues involved in the IRFA will

¹ 47 C.F.R. § 1.1206.

be allowed but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's Rules.²

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

² 47 C.F.R. § 1.1206(b).

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0531 (voice), 202-418-7365 (TTY).

For further information contact: Jennifer Salhus, Attorney Advisor, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-1310 (voice) or (202) 418-1169 (TTY) or Pam Slipakoff, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7705 (voice) or (202) 418-0484 (TTY).

Action by the Commission on April 19, 2005: Chairman Kevin J. Martin; Commissioners Kathleen Q. Abernathy, Michael J. Copps, Jonathan S. Adelstein.

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APPENDIX A

**Initial Regulatory Flexibility Analysis
CC Docket No. 95-116**

1. As required by the Regulatory Flexibility Act, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the rules and policies described in the Intermodal Order concerning wireline-to-wireless number portability (*Intermodal Order*) (See Appendix B).² Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the Public Notice. The Commission will send a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. § 603(a). In addition, this will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Rules

2. The *Intermodal Order* involved rules and policies aimed at ensuring wide availability of number portability for consumers across the country. By making it easier for greater numbers of consumers to switch freely among carriers, the *Intermodal Order* was intended to promote competition and encourage carriers to provide new services and lower prices for consumers. To obtain these objectives, the order required porting to any wireless carrier whose "coverage area" overlaps the geographic location of the original rate center associated with the number to be ported, provided that the porting-in carrier maintains the number's original rate center designation following the port. The order defined wireless "coverage area" as the area in which wireless service can be received from the wireless carrier.

B. Legal Basis for Rules

3. The *Intermodal Order* was authorized under Section 52.23 of the Commission's rules, 47 C.F.R. § 52.23, and in Sections 1, 3, 4(i), 201, 202, 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 153, 154(i), 201, 202, and 251.

C. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act.⁶ Under the

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 18 FCC Rcd 23697 (2003).

³ See 5 U.S.C. § 603(a).

⁴ See 5 U.S.C. § 603(b)(3).

⁵ 5 U.S.C. § 601(6).

⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small

Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷

5. In this section, we describe and estimate the number of small entities that may be affected by our action. The most reliable source of information regarding the total numbers of certain common carriers and related providers nationwide appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.⁸ In addition, the SBA has developed size standards for small businesses within the commercial census category of Wired Telecommunications Carriers.⁹ Under this category, a business is small if it has 1,500 or fewer employees. Below, we discuss the total estimated numbers of small businesses that might be affected by our actions.

6. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁰ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.¹¹ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.¹² Thus, under this size standard, the majority of firms can be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.¹³

7. **Incumbent Local Exchange Carriers.** We have included small incumbent local exchange carriers (LECs) in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter*

business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register."

⁷ 15 U.S.C. § 632.

⁸ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* at Table 5.3, Page 5-5 (May 2004) (*Trends in Telephone Service*). This source uses data that are current as of October 22, 2003.

⁹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110.

¹⁰ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in Oct. 2002).

¹¹ 1997 Economic Census, Establishment and Firm Size, Table 5, NAICS code 513310 (issued Oct. 2000).

¹² *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

¹³ See U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513310 (issued Nov. 2004). The preliminary data indicate that the total number of "establishments" increased from 20,815 to 27,891. In this context, the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹⁴ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁵ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

8. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁶ According to Commission data,¹⁷ 1,310 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small entities.

9. **Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸ According to Commission data,¹⁹ 563 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive LEC services. Of these 563 carriers, an estimated 472 have 1,500 or fewer employees and 91 have more than 1,500 employees. In addition, 14 carriers have reported that they are "Shared-Tenant Service Providers," and all 14 are estimated to have 1,500 or fewer employees. In addition, 37 carriers have reported that they are "Other Local Service Providers." Of the 37, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

10. Requiring porting beyond wireline rate center boundaries could impose compliance burdens on small entities. First, by making porting more widely available, the requirement may increase the amount of telephone numbers that small carriers may be required to port. To handle this increased porting volume, small carriers may need to add personnel, update porting procedures, or upgrade software. In

¹⁴ 5 U.S.C. § 601(3).

¹⁵ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁶ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 517110 (changed from 513310 in October 2002).

¹⁷ *Trends in Telephone Service* at Table 5.3.

¹⁸ 13 C.F.R. § 121.201, NAICS code 517110 (changed from 513310 in October 2002).

¹⁹ *Trends in Telephone Service* at Table 5.3.

addition to the compliance burdens associated with increased porting volume, porting beyond wireline rate center boundaries may cause small or rural carriers to incur transport costs associated with delivering calls to ported numbers served by distant switches.²⁰ We seek comment on the costs associated with these potential compliance burdens.

11. In addition to the impacts associated with transporting calls to ported numbers, by making it easier for more consumers to port, the requirements may cause small or rural carriers to lose customers. Small carriers have expressed concern that permitting porting beyond wireline rate center boundaries would give large wireless carriers an unfair competitive advantage over smaller LECs by making it easier for more consumers to port numbers to larger nationwide carriers.²¹

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²²

13. The Commission has previously addressed concerns raised by small and rural carriers when considering intermodal portability issues. Specifically, the *Intermodal Order* considered limiting the scope of intermodal porting based on the small carrier concern that requiring porting to a wireless carrier that does not have a physical point of interconnection or numbering resources in the rate center associated with the ported number would give wireless carriers an unfair competitive advantage. The order found, however, that these considerations did not justify denying wireline consumers the benefit of being able to port their numbers to wireless carriers. In addition, the order noted that each type of service offers its own advantages and disadvantage and that consumers would consider these attributes in determining whether or not to port their numbers. (See Appendix B, *Intermodal Order* at para. 27). The *Intermodal Order* also considered the concern expressed by small carriers that requiring porting beyond wireline rate center boundaries would lead to increased transport costs. The order concluded that such concerns were outside the scope of the number portability proceeding and noted that the rating and routing issues raised by the rural wireline carriers were also implicated in the context of non-ported numbers and were before the Commission in other proceedings. (See Appendix B, *Intermodal Order* at paras. 39-40).

14. The order also, for wireline carriers operating in areas outside of the 100 largest MSAs, waived, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. (See Appendix B, *Intermodal Order* at para. 29). The order noted that the transition period would help ensure a smooth transition for carriers operating outside of the 100 largest

²⁰ We note that, in its comments addressing the Commission's November 10, 2003, Further Notice of Proposed Rulemaking on wireless-to-wireline porting issues, the Small Business Administration (SBA) stated that requiring wireless-to-wireline porting where there is a rate center mismatch could impose costs on small entities associated with transporting calls to ported numbers. See *SBA Reply Comments on Commission's November 10, 2003, Further Notice of Proposed Rulemaking* at 7.

²¹ *Id.* In its comments on the Commission's November 10, 2003, Further Notice of Proposed Rulemaking, SBA also stated that requiring wireless-to-wireline porting could create an unfair competitive advantage between wireline and wireless carriers.

²² See 5 U.S.C. § 603.

MSAs and provide them with sufficient time to make necessary modifications to their systems. The order also noted that carriers could file petitions for waiver of their obligation to port numbers to wireless carriers, if they could provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules. (See Appendix B, *Intermodal Order* at para. 29).²³

15. In addition to the steps taken by the Commission, pursuant to section 251(f)(2) of the Communications Act of 1934, as amended, carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide may petition a state commission to suspend or modify the LNP requirements. Under the terms of section 251(f)(2), the state commission shall grant such petition to the extent that, and for such duration as, the state commission determines that such suspension or modification: (A) is necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement; and (B) is consistent with the public interest, convenience, and necessity.²⁴ Numerous petitions have been filed with state commissions since the *Intermodal Order's* release and in many of these cases, states have granted temporary or permanent relief from LNP requirements to small carriers. We seek comment on the effectiveness of this mechanism for addressing any potential burdens on small carriers.

F. Overlapping, Duplicating, or Conflicting Federal Rules

16. None.

²³ Since the order's release, the Commission granted several requests for waiver of the porting deadline. For example, the Commission granted a limited waiver, until May 24, 2004, of the wireline to wireless porting requirement for carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide. Telephone Number Portability, CC Docket No. 95-116, 19 FCC Rcd 875.

²⁴ See 47 U.S.C. § 251(f)(2).

Appendix B

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telephone Number Portability

CTIA Petitions for Declaratory Ruling on
Wireline-Wireless Porting Issues

CC Docket No. 95-116

**MEMORANDUM OPINION AND ORDER AND FURTHER NOTICE OF PROPOSED
RULEMAKING**

Adopted: November 7, 2003

Released: November 10, 2003

By the Commission: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing
separate statements.

Comment Date: 20 days after publication in the Federal Register.

Reply Comment Date: 30 days after publication in the Federal Register.

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Appendix A – List of Commenters

Appendix B - Initial Regulatory Flexibility Analysis

I. INTRODUCTION

1. In this order, we provide guidance to the industry on local number portability (LNP) issues relating to porting between wireless and wireline carriers (intermodal porting). First, in response to a Petition for Declaratory Ruling filed on January 23, 2003, by the Cellular Telecommunications and Internet Association (CTIA), we clarify that nothing in the Commission's rules limits porting between wireline and wireless carriers to require the wireless carrier to have a physical point of interconnection¹ or numbering resources in the rate center where the number is assigned. We find that porting from a wireline carrier to a wireless carrier is required where the requesting wireless carrier's "coverage area" overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port. The wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. In addition, in response to a subsequent CTIA petition, we clarify that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers. We also decline to adopt a mandatory porting interval for wireline-to-wireless ports at the present time, but we seek comment on the issue as noted below.

2. In the accompanying Further Notice of Proposed Rulemaking (Further Notice), we seek comment on how to facilitate wireless-to-wireline porting if the rate center associated with the wireless number is different from the rate center in which the wireline carrier seeks to serve the customer. In addition, we seek comment on whether we should require carriers to reduce the length of the porting interval for ports between wireless and wireline carriers.

II. BACKGROUND

A. Statutory and Regulatory Background

3. Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability, to the extent technically feasible, in

¹ Referred to hereinafter as "point of interconnection."

accordance with requirements prescribed by the Commission.² Under the Act and the Commission's rules, local number portability is defined as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."³

4. The Commission released the Local Number Portability *First Report and Order* in 1996, which promulgated rules and deployment schedules for the implementation of number portability.⁴ The Commission highlighted the critical policy goals underlying the LNP requirement, indicating that "the ability of end users to retain their telephone numbers when changing service providers gives customers flexibility in the quality, price, and variety of telecommunications services they can choose to purchase."⁵ The Commission found that "number portability promotes competition between telecommunications service providers by, among other things, allowing customers to respond to price and service changes without changing their telephone numbers."⁶

5. The Commission adopted broad porting requirements, noting that "as a practical matter, [the porting obligation] requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA."⁷ In addition, the Commission noted the section 251(b) requires LECs to port numbers to wireless carriers. The Commission stated that "section 251(b) requires local exchange carriers to provide number portability to all telecommunications carriers, and thus to Commercial Mobile Radio Service (CMRS) providers as well as wireline service providers."⁸

6. The Commission adopted rules implementing the LNP requirements. Section 52.21(k) of the rules defines number portability to mean "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁹ Section 52.23(b)(1) provides that "all local exchange carriers (LECs) must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998 ... in switches for which another carrier has made a specific request for the provision of number portability ..."¹⁰ Finally, Section 52.23(b)(2)(i) of the Commission rules provides that "any wireline carrier that is certified ... to provide local exchange service, or any licensed CMRS provider, must be permitted to make a request for the provision of number portability."¹¹

² 47 U.S.C. § 251(b)(2).

³ 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(k).

⁴ Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (First Report and Order).

⁵ *Id.* at 8368, para. 30.

⁶ *Id.*

⁷ *Id.* at 8393, para. 77.

⁸ *Id.* at 8431, para. 152.

⁹ 47 C.F.R. § 52.21(k).

¹⁰ 47 C.F.R. § 52.23(b)(1).

¹¹ 47 C.F.R. § 52.23(b)(2)(i).

7. In 1997, in the Local Number Portability *Second Report and Order*, the Commission adopted recommendations from the North American Numbering Council (NANC) for the implementation of wireline-to-wireline number portability.¹² Under the guidelines developed by the NANC, porting between LECs was limited to carriers with facilities or numbering resources in the same rate center to accommodate technical limitations associated with the proper rating of wireline calls.¹³ The NANC guidelines made no recommendations regarding limitations on intermodal porting.

8. Although the Act excludes CMRS providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers.¹⁴ In the Local Number Portability *First Report and Order*, the Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability.¹⁵ The Commission noted that "sections 2 and 332(c)(1) of the Act give the Commission authority to regulate commercial mobile radio service operators as common carriers ..."¹⁶ Noting that section 1 of the Act requires the Commission to make available to people of the United States, a rapid, efficient, nation-wide and world-wide wire and radio communication service, the Commission stated that its interest in number portability "is bolstered by the potential deployment of different number portability solutions across the country, which would significantly impact the provision of interstate telecommunications services."¹⁷ Section 4(i) of the Act grants the Commission authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Communications Act of 1934, as amended] as may be necessary in the execution of its functions."¹⁸ The Commission concluded that "the public interest is served by requiring the provision of number portability by CMRS providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services."¹⁹

9. The Commission determined that implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition

¹² Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd 12,281 (1997) (*Second Report and Order*). The requirement that LECs port numbers to wireless carriers has not been applied previously due to extensions of the deadline for wireless carriers' implementation of LNP. See Telephone Number Portability, Cellular Telecommunications & Industry Association's Petition for Extension of Implementation Deadlines, CC Docket No. 95-116, *Memorandum Opinion and Order*, 13 FCC Rcd 16315 (1998); Telephone Number Portability, Cellular Telecommunications & Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, WT Docket No. 98-229, *Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999); and Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation, WT Docket No. 01-184 and CC Docket No. 95-116, *Memorandum Opinion and Order*, 17 FCC Rcd 14972 (2002).

¹³ North American Numbering Council Local Number Portability Selection Working Group Final report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at <http://www.fcc.gov/wcb/tapd/nanc/lnpastuf.html>.

¹⁴ *First Report and Order* at 8431, paras 152-53.

¹⁵ *Id.* at para. 153. See 47 U.S.C. §§ 1, 2, 4(i), and 332.

¹⁶ *Id.*

¹⁷ *Id.* at 8432, para. 153.

¹⁸ 47 U.S.C. § 154(i).

¹⁹ *First Report and Order* at 8432, para. 153.

between wireless carriers as well as promote competition between wireless and wireline carriers.²⁰ The Commission noted that "service provider portability will encourage CMRS-wireline competition, creating incentives for carriers to reduce prices for telecommunications services and to invest in innovative technologies, and enhancing flexibility for users of telecommunications services."²¹ Commission rules reflecting the wireless LNP requirement provide that, by the implementation deadline, "all covered CMRS providers must provide a long-term database method for number portability ... in switches for which another carrier has made a request for the provision of LNP."²²

10. In the Local Number Portability *Second Report and Order*, after adopting NANC guidelines applicable to wireline-to-wireline porting, the Commission directed the NANC to develop standards and procedures necessary to provide for wireless carriers' participation in local number portability.²³ The Commission indicated its expectation that changes to LNP processes would need to be made to accommodate porting to wireless carriers. The Commission noted that "the industry, under the auspices of NANC, will probably need to make modifications to local number portability standards and processes as it gains experience in implementing number portability and obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations."²⁴ In addition, the Commission noted that the NANC would have to consider issues of particular concern to wireless carriers, including how to account for differences between service area boundaries for wireline versus wireless services.²⁵

11. In 1998, the NANC submitted a report on the integration of wireless and wireline number portability from its Local Number Portability Administration (LNPA) Working Group to the Common Carrier Bureau (now known as the Wireline Competition Bureau).²⁶ The report discussed technical issues associated with wireless-to-wireline porting. The report noted that differences between the local serving areas of wireless and wireline carriers affected the porting capabilities of each type of carrier, making it infeasible for some wireline carriers to port-in numbers from wireless subscribers. The report explained that because wireline service is fixed to a specific location the subscriber's telephone number is limited to use within the rate center within which it is assigned.²⁷ By contrast, the report noted, because wireless service is mobile and not fixed to a specific location, while the wireless subscriber's number is associated with a specific geographic rate center, the wireless service is not limited to use within that rate center.²⁸ As a result of these differences, the report indicated that, if a wireless subscriber seeks to port his or her number to a wireline carrier, but the subscriber's NPA-NXX is outside of the wireline rate center where

²⁰ *Id.* at 8434-36, paras. 157-160.

²¹ *Id.* at 8437, para. 160.

²² 47 C.F.R. § 52.31(a).

²³ *Second Report and Order* at 12333, para. 90.

²⁴ *Id.*

²⁵ *Id.* at 12334, para. 91.

²⁶ North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998) (First Report on Wireless Wireline Integration).

²⁷ *Id.* at 7.

²⁸ *Id.*

the subscriber is located, the wireline carrier may not be able to receive the ported number.²⁹ The NANC did not reach consensus on a solution to this issue, and reported that this lack of symmetry, referred to as "rate center disparity," raises questions by some carriers about competitive neutrality.³⁰ The Common Carrier Bureau sought comment on the NANC report.³¹

12. The NANC submitted a second report on the integration of wireless and wireline number portability to the Commission in 1999,³² and a third report in 2000,³³ both focusing on porting interval issues. The second report provided an analysis of the wireline porting interval and considered alternatives to reduce the porting interval for ports between wireless and wireline carriers.³⁴ The report recommended that each potential alternative be thoroughly developed and investigated.³⁵ The third report again analyzed the elements of the wireline porting interval and examined whether the length of the porting interval for both intermodal ports and wireline-to-wireline ports could be reduced.³⁶ The NANC determined that the wireline porting interval should not be reduced, but it was unable to reach a consensus on an intermodal porting interval.³⁷ Accordingly, we seek comment on the appropriate interval for intermodal porting.³⁸

B. Outstanding Petitions for Declaratory Ruling

13. On January 23, 2003, CTIA filed a petition requesting that the Commission issue a declaratory ruling that wireline carriers have an obligation to port their customers' telephone numbers to wireless carriers whose service areas overlap the wireline rate center that is associated with the number.³⁹ In its petition, CTIA claims that some LECs have narrowly construed their LNP obligations with regard to wireless carriers, taking the position that portability is only required where the wireless carrier

²⁹ *Id.*

³⁰ Letter from Alan C. Hasselwander, Chairman, NANC to A. Richard Metzger, Jr., Chief, Common Carrier Bureau (filed Apr. 14, 1998).

³¹ Common Carrier Bureau Seeks Comment on North American Numbering Council Recommendation Concerning Local Number Portability Administration Wireline and Wireless Integration, CC Docket No. 95-116, *Public Notice*, 13 FCC Rcd 17342 (1998).

³² North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999) (Second Report on Wireless Wireline Integration).

³³ North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket no. 95-116 (filed Nov. 29, 2000) (Third Report on Wireless Wireline Integration).

³⁴ Second Report on Wireless Wireline Integration at section 3.

³⁵ *Id.* at section 1.1.

³⁶ Third Report on Wireless Wireline Integration at section 3.

³⁷ Letter from John R. Hoffman, NANC Chair to Dorothy Attwood, Chief, Common Carrier Bureau, (filed Nov. 29, 2000).

³⁸ See paras. 45-51, *infra*.

³⁹ CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed Jan. 23, 2003) (January 23rd Petition).

receiving the number already has a point of presence or numbering resources in the wireline rate center.⁴⁰

CTIA urges the Commission to confirm that wireline carriers have an obligation to port to wireless carriers when their respective service areas overlap. CTIA notes that, in several of its decisions, the Commission has found that LNP is necessary to promote competition between the wireless and wireline industries. CTIA argues that, without Commission action to resolve the deadlock over the rate center disparity issue, the reality of wireline-to-wireless porting will be at risk because many wireline subscribers will be unable to port their numbers to wireless carriers that serve their areas.⁴¹

14. CTIA also requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier can be based on a service-level porting agreement between the carriers, and does not require an interconnection agreement. According to CTIA, number portability requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer.⁴²

15. The majority of wireless carriers submitting comments support CTIA's request for declaratory ruling. They agree with CTIA that, without Commission action to resolve the rate center issue, the majority of wireline customers will be prevented from porting their number to a wireless carrier.⁴³ They call for the Commission to reject any proposal that would restrict porting to rate centers where a wireless carrier has already obtained numbers, contending that such a limitation would be inconsistent with the competitive objectives of intermodal LNP and would waste numbering resources.⁴⁴

16. Wireline carriers generally oppose CTIA's petition.⁴⁵ Some argue that requiring LECs to port to carriers who do not have a point of interconnection or numbering resources in the same rate center in which the number is assigned would give wireless carriers an unfair competitive advantage over wireline carriers.⁴⁶ LECs argue that, in contrast to wireless carriers who have flexibility in establishing their service areas and rates, wireline carriers are governed by state regulations. Under the state regulatory regime, they rate and route local and toll calls based on wireline rate centers. Consequently, LECs

⁴⁰ *Id.* at 3.

⁴¹ *Id.* at 19.

⁴² *Id.* at 3.

⁴³ AT&T Wireless, Midwest Wireless, Nextel, Sprint, T-Mobile, and US Cellular all filed comments supporting CTIA's January 23rd petition. Comments and Reply Comments filed in response to the CTIA's January 23rd and May 13th petitions are listed in Appendix A.

⁴⁴ See, e.g., Sprint Reply Comments on CTIA's January 23rd Petition at 9; T-Mobile Comments on CTIA's January 23rd Petition at 14-15; and Virgin Mobile Reply Comments on CTIA's January 23rd Petition at 4.

⁴⁵ Centurytel, Fred Williams & Associates, the Independent Alliance, the Michigan Exchange Carriers Association, NECA and NTCA, the Nebraska Rural Independent Companies, OPASTCO, SBC, TCA, USTA, and Valor Communications all filed comments opposing CTIA's January 23rd petition.

⁴⁶ See, e.g., Centurytel Comments on CTIA's January 23rd Petition at 5-6; Fred Williams & Associates Comments on CTIA's January 23rd Petition at 8; SBC Comments on CTIA's January 23rd Petition at 1; Letter from Cronan O'Connell, Vice President-Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Oct. 9, 2003) (Qwest Oct. 9th *Ex Parte*); and Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, BellSouth to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 (filed Sept. 9, 2003) (BellSouth Sept. 9th *Ex Parte*).

contend, wireline service providers do not have the same opportunity that wireless carriers have to offer number portability where the rate center in which the number is assigned does not match the rate center in which the LEC seeks to serve the customer.⁴⁷ Others argue that CTIA's petition would amount to a system of location portability rather than service provider portability, causing customer confusion over the rating of calls.⁴⁸ Several LECs also argue that the Commission may not permit intermodal porting outside of wireline rate center boundaries without first issuing a Notice of Proposed Rulemaking.⁴⁹ Several rural LECs argue that requiring porting between wireline and wireless carriers where the wireless carriers do not have a point of interconnection in the same rate center as the ported number would raise intercarrier compensation issues, as wireline carriers would be required to transport calls to ported numbers through points of interconnection outside of rural LEC serving areas.⁵⁰

17. On May 13, 2003, CTIA filed a second Petition for Declaratory Ruling. In its petition, CTIA argues that, in addition to the rate center issue that was the subject of its January petition, there are additional LNP implementation issues that have not been resolved by industry consensus and therefore must be addressed by the Commission.⁵¹ Specifically, CTIA requests that the Commission rule on the appropriate length of the porting interval, the necessity of interconnection agreements, a dispute between BellSouth and Sprint concerning the ability of carriers to designate different routing and rating points, definition of the largest 100 Metropolitan Statistical Areas (MSAs), the bona fide request requirement, and whether carriers must support nationwide roaming for customers with ported numbers.

18. On October 7, 2003, we released a Memorandum Opinion and Order addressing carrier requests for clarification of wireless-wireless porting issues.⁵² In response to CTIA's May 13th petition as well as a Petition for Declaratory Ruling/Application for Review, we concluded that wireless carriers may not impose "business rules" on their customers that purport to restrict carriers' obligations to port numbers upon receipt of a valid request to do so. In addition, we clarified that wireless-to-wireless porting does not require the wireless carrier receiving the number to be directly interconnected with the wireless carrier that gives up the number or to have numbering resources in the rate center associated with the ported number. We clarified that, although wireless carriers may voluntarily negotiate interconnection agreements with one another, such agreements are not required for wireless-to-wireless porting. We confirmed also that, in cases where wireless carriers are unable to reach agreement regarding the terms and conditions of porting, all such carriers must port numbers upon receipt of a valid request from another carrier, with no conditions.

⁴⁷ See, e.g., Letter from James C. Smith, Senior Vice President, SBC Telecommunications, Inc. to Michael K. Powell, Chairman, FCC, CC Docket No. 95-116 (filed Aug. 29, 2003) (SBC Aug. 29th *Ex Parte*); and BellSouth Sept. 9th *Ex Parte*.

⁴⁸ See Centurytel Comments on CTIA's January 23rd Petition at 4-5.

⁴⁹ See, e.g., Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct. 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29th *Ex Parte*.

⁵⁰ NECA and NTCA Comments on CTIA's January 23rd Petition at 6. See, In the Matter of Sprint Petition for Declaratory Ruling, Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers, Sprint Petition for Declaratory Ruling, CC Docket No. 01-92 (filed July 18, 2002) (Sprint Petition for Declaratory Ruling).

⁵¹ CTIA Petition for Declaratory Ruling, CC Docket No. 95-116 (filed May 13, 2003) (May 13th Petition).

⁵² Telephone Number Portability, CC Docket No. 95-116, *Memorandum Opinion and Order*, FCC 03-237, rel. Oct. 7, 2003.

19. We encouraged wireless carriers to complete "simple" ports within the industry-established two and one half hour porting interval and found that no action was necessary regarding the porting of numbers served by Type 1 interconnection because carriers are migrating these numbers to switches served by Type 2 interconnection or are otherwise developing solutions.⁵³ Finally, we reiterated the requirement that wireless carriers support roaming nationwide for customers with pooled and ported numbers, and we addressed outstanding petitions for waiver of the roaming requirement. We indicated our intention to address issues related to intermodal porting in a separate order.⁵⁴

III. ORDER

A. Wireline-to-Wireless Porting

20. *Background.* In its January 23rd Petition, CTIA requests that the Commission clarify that the LNP rules require wireline carriers to port numbers to any wireless carrier whose service area overlaps the wireline carrier's rate center that is associated with the ported number.⁵⁵ CTIA claims that, absent such a clarification, a majority of wireline customers will not be able to port their phone number to the wireless carrier of their choice because wireless carriers typically have a point of interconnection or numbering resources in only a fraction of the wireline rate centers in their service areas.⁵⁶ Citing prior Commission decisions, CTIA notes that the Commission has cited intermodal competition as a basis for imposing LNP requirements on wireless carriers.⁵⁷ CTIA argues that the Commission's objectives with respect to intermodal competition cannot be realized without prompt action.

21. *Discussion.* The Act and the Commission's rules impose broad porting obligations on LECs. Section 251(b) of the Act provides that all local exchange carriers "have the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."⁵⁸ The Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."⁵⁹ In implementing these requirements in the Local Number Portability *First Report and Order*, the

⁵³ Type 1 numbers reside in an end office of a LEC and are assigned to a Type 1 interconnection group, which connects the wireless carrier's switch and the LEC's end office switch. Type 2 numbers reside in a wireless carrier's switch and are assigned to a Type 2 interconnection group, which connects the wireless carrier's switch and a LEC access tandem switch or end office switch.

⁵⁴ Remaining issues from CTIA's January 23rd and May 13th petitions pertaining to intermodal porting are addressed in this order. Additional issues from CTIA's May 13th petition, including the implication of the porting interval for E911, the definition of the 100 largest MSAs, and the bona fide request requirement have been addressed separately. See Letter from John B. Muleta, Chief, Wireless telecommunications Bureau, to John T. Scott, III, Vice President and Deputy General Counsel, Verizon Wireless and Michael F. Altschul, Senior Vice President, General Counsel, CTIA, CC Docket No. 95-116, DA 03-2190, dated July 3, 2003. See also, Numbering Resource Optimization, *Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket Nos. 99-200 and 95-116 (rel. June 18, 2003).

⁵⁵ January 23rd Petition at 3.

⁵⁶ *Id.* at 18.

⁵⁷ *Id.* at 12-16.

⁵⁸ 47 U.S.C. § 251(b).

⁵⁹ 47 U.S.C. § 153(30).

Commission determined that LECs were required to provide portability to all other telecommunications carriers, including CMRS service providers, providing local exchange or exchange access service within the same MSA.⁶⁰ The Commission's rules reflect these requirements, requiring LECs to offer number portability in switches for which another carrier made a request for number portability and providing that all carriers, including CMRS service providers must be permitted to make requests for number portability.⁶¹

22. We conclude that, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's "coverage area" overlaps the geographic location of the rate center in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's original rate center designation following the port.⁶² Permitting intermodal porting in this manner is consistent with the requirement that carriers support their customers' ability to port numbers while remaining at the same location. For purposes of this discussion, the wireless "coverage area" is the area in which wireless service can be received from the wireless carrier. Permitting wireline-to-wireless porting under these conditions will provide customers the option of porting their wireline number to any wireless carrier that offers service at the same location. We also reaffirm that wireless carriers must port numbers to wireline carriers within the number's originating rate center. With respect to wireless-to-wireline porting, however, because of the limitations on wireline carriers' networks ability to port-in numbers from distant rate centers, we will hold neither the wireline nor the wireless carriers liable for failing to port under these conditions. Rather, we seek comment on this issue in the Further Notice below.

23. We make our determinations based on several factors. First, as stated above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent that it is technically feasible to do so, in accordance with regulations prescribed by the Commission.⁶³ There is no persuasive evidence in the record indicating that there are significant technical difficulties that would prevent a wireline carrier from porting a number to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number. Accordingly, the plain text of the Act and the Commission's rules, requiring LECs to provide number portability applies. In fact, several LECs acknowledge that there is no technical obstacle to porting wireline numbers to wireless carriers whose point of interconnection is outside of the rate center of the ported numbers.⁶⁴ Moreover, at least two LECs, Verizon and Sprint, have already established

⁶⁰ *First Report and Order* at 8393, 8431, paras. 77 and 152.

⁶¹ 47 C.F.R. § 52.23(b)(1), (b)(2)(i).

⁶² We anticipate that a minimal amount of identifying information will be transmitted from the wireless carrier to the LEC when a customer seeks to port. For example, carriers may choose to verify the zip code of the porting-out wireline customer in their validation procedures.

⁶³ 47 U.S.C. § 251(b)(2), 47 C.F.R. § 52.23.

⁶⁴ See BellSouth Comments on CTIA's January 23rd Petition at 3; and USTA Comments on CTIA's January 23rd Petition at 7-8.

Several interexchange carriers (IXCs) have brought to the Commission's attention a problem IXCs face in identifying whether a customer has switched carriers. This problem can result in customers receiving erroneous bills from IXCs after they have switched local or interexchange carriers, and could also be a problem when customers port from a wireline carrier to a wireless carrier. While we do not address this issue in the instant order, we have sought comment on carrier petitions regarding this matter. See Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking, filed by Americatel Corporation, and for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers,

agreements with their wireless affiliates that specifically provide for intermodal porting.⁶⁵ In addition, BellSouth indicates in its comments that it has no intention of preventing customers from porting their telephone numbers to wireless carriers upon the customers' requests – regardless of whether or not the carriers' service areas overlap.⁶⁶ Accordingly, BellSouth states, number portability can still occur despite the "rate center disparity" issue. We note that, to the extent that LECs assert an inability to port numbers to wireless carriers under the circumstances described herein, they bear the burden of demonstrating with specific evidence that porting to a wireless carrier without a point of interconnection or numbering resources in the same rate center to which the ported number is assigned is not technically feasible pursuant to our rules.

24. Second, neither the Commission's LNP rules nor any of the LNP orders have required wireless carriers to have points of interconnection or numbering resources in the same rate center as the assigned number for wireline-to-wireless porting. In the Local Number Portability *Second Report and Order*, the Commission adopted NANC recommendations regarding several specific aspects of number portability implementation, including technical and operational standards for the provision of number portability by wireline carriers.⁶⁷ In this context, the Commission adopted the NANC recommendations concerning the boundaries applicable to wireline-to-wireline porting. Specifically, the Commission adopted NANC recommendations limiting the scope of ports to wireline carriers based on wireline carriers' inability to receive numbers from foreign rate centers.⁶⁸

25. In this order, we address a different issue, wireline-to-wireless porting. The NANC recommendations that were the subject of the *Second Report and Order* included a boundary for wireline-to-wireline porting, but were silent regarding wireline-to-wireless porting issues. In adopting the NANC recommendations, the Commission specifically recognized that the NANC had not included recommendations regarding wireless carriers' participation in number portability and that modifications to existing standards and procedures would probably need to be made as the industry obtained additional information about incorporating CMRS service providers into a long-term number portability solution and interconnecting CMRS carriers with wireline carriers already implementing number portability.⁶⁹ However, while the Commission noted that NANC should consider intermodal porting issues of concern

filed by AT&T Corp., Sprint Corp., and WorldCom, Inc., CG Docket No. 02-386, *Public Notice*, 17 FCC Rcd 25535 (2002).

⁶⁵ "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at <http://news.vzw.com/news/2003/09/pr2003-09-22.html>; and "Sprint Wireless Local Number Portability Plans on Track, on Schedule for November Deadline," Press Release from Sprint dated Oct. 1, 2003, available at Sprint.com.

⁶⁶ See BellSouth Comments on CTIA's January 23rd Petition at 3. In recent ex parte filings, BellSouth argues that the Commission cannot proceed to require intermodal porting until it addresses the issues arising from the differences in network architecture, operational support systems, and regulatory requirements that distinguish wireline carriers from wireless carriers. See, e.g., BellSouth Sept. 9th *Ex Parte*.

⁶⁷ See *Second Report and Order*. Subsequent NANC reports address technical issues associated with wireless-to-wireline porting. In the Further Notice, we seek comment on these technical feasibility issues.

⁶⁸ North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix D at 6 (rel. April 25, 1997). This report is available at www.fcc.gov/wcb/tapd/nanc/lnpastuf.html.

⁶⁹ *Second Report and Order* 12 FCC Rcd at 12333-34.

to wireless carriers, it did not impose limits on wireline-to-wireless porting while NANC considered these issues, nor did it give up its inherent authority to interpret the statute and rules with respect to the obligation of wireline carriers to port numbers to wireless carriers. Accordingly, we find that in light of the fact that the Commission has never adopted any limits regarding wireline-to-wireless number portability, as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned.⁷⁰

26. We reject the argument advanced by certain wireline carriers,⁷¹ that requiring LECs to port to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number would constitute a new obligation imposed without proper notice. In fact, the requirement that LECs port numbers to wireless carriers is not a new rule. Citing the D.C. Circuit's decision in the *Sprint* case specifying the distinction between clarifications of existing rules and new rulemakings subject to APA procedures, Qwest, for example, argues that the permitting wireline-to-wireless porting in the manner outlined above would change LECs' existing porting obligations.⁷² As described earlier, however, section 251(b) of the Act and the Commission's Local Number Portability *First Report and Order* impose broad porting obligations on wireline carriers. Specifically, these authorities require wireline carriers to provide portability to all other telecommunications carriers, including wireless service providers. While the Commission decision in the Local Number Portability *Second Report and Order* limited the scope of wireline carriers' porting obligation with respect to the boundary for wireline-to-wireline porting, the Commission, as noted above, has never established limits with respect to wireline carriers' obligation to port to wireless carriers. The clarifications we make in this order interpret wireline carriers' existing obligation to port numbers to wireless carriers. Therefore, these clarifications comply with the requirements of the Administrative Procedure Act as well as the D.C. Circuit's decision in the *Sprint* case.

27. We also reject the argument made by some LECs that the scope of wireline-to-wireless porting should be limited because wireline carriers may not be able to offer portability to certain wireless subscribers.⁷³ As discussed above, under the Act and the Commission's rules, wireline carriers must port numbers to other telecommunications carriers, to the extent technically feasible. The fact that there may be technical obstacles that could prevent some other types of porting does not justify denying wireline consumers the benefit of being able to port their wireline numbers to wireless carriers. Each type of service offers its own advantages and disadvantages (e.g., wireless service offers mobility and larger calling areas, but also the potential for dropped calls) and wireline customers will consider these attributes in determining whether or not to port their number. In our view, it would not be appropriate to prevent wireline customers from taking advantage of the mobility or the larger local calling areas associated with wireless service simply because wireline carriers cannot currently accommodate all potential requests from customers with wireless service to port their numbers to a wireline service provider. Evidence from the record shows that limiting wireline-to-wireless porting to rate centers where a wireless carrier has a point of interconnection or numbering resources would deprive the majority of wireline consumers of the ability to port their number to a wireless carrier.⁷⁴ With such limited intermodal porting, the competitive

⁷⁰ Similarly, wireless-to-wireline porting is required, as of November 24, 2003, where the requesting carrier's coverage area overlaps the geographic location of the rate center to which the number is assigned

⁷¹ See, e.g., Letter from Gary Lytle, Qwest to Marlene H. Dortch, Secretary, FCC (filed Oct. 17, 2003) (Qwest Oct. 17th *Ex Parte*); and SBC Aug. 29 *Ex Parte*.

⁷² Qwest Oct. 17th *Ex Parte* at 11. See *Sprint Corp. v. FCC*, 315 F. 3d 369 (D.C. Cir. 2003).

⁷³ See, e.g., SBC Aug. 29th *Ex Parte* and BellSouth Sept. 9th *Ex Parte*.

⁷⁴ January 23rd Petition at 6.

benefits we seek to promote through the porting requirements may not be fully achieved. The focus of the porting rules is on promoting competition, rather than protecting individual competitors. To the extent that wireline carriers may have fewer opportunities to win customers through porting, this disparity results from the wireline network architecture and state regulatory requirements, rather than Commission rules.

28. We conclude that porting from a wireline to a wireless carrier that does not have a point of interconnection or numbering resources in the same rate center as the ported number does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same. As stated above, a wireless carrier porting-in a wireline number is required to maintain the number's original rate center designation following the port. As a result, calls to the ported number will continue to be rated in the same fashion as they were prior to the port. As to the routing of calls to ported numbers, it should be no different than if the wireless carrier had assigned the customer a new number rated to that rate center.⁷⁵

29. Some wireline carriers contend that they lack the technical capability to support wireline-to-wireless porting in the manner outlined above, and that they need time to make technical modifications to their systems. We emphasize that our holding in this order requires wireline carriers to support wireline-to-wireless porting in accordance with this order by November 24, 2003, unless they can provide specific evidence demonstrating that doing so is not technically feasible pursuant to our rules.⁷⁶ We expect carriers that need to make technical modifications to do so forthwith, as the record indicates that major system modifications are not required and that several wireline carriers have already announced their technical readiness to port numbers to wireless carriers without regard to rate centers.⁷⁷ We recognize, however, that many wireline carriers outside the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability. In addition we note that wireless carriers outside the top 100 MSAs are not required to provide LNP prior to May 24, 2004, and accordingly are unlikely to seek to port numbers from wireline carriers prior to that date. Therefore for wireline carriers operating in

⁷⁵ As noted in paras. 39-40 below, there is a dispute as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated. See *Sprint Petition for Declaratory Ruling*. The existence of this dispute over transport costs does not, however, provide a reason to delay or limit the availability of porting from wireline to wireless carriers.

We recognize that the Act limits wireline carriers' ability to route calls outside of Local Access Transport Area (LATA) boundaries. See 47 U.S.C. § 272. See also, Application by SBC Communications, Inc., Southwestern Bell Telephone, and Southwestern Bell Communications, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, *Memorandum Opinion and Order*, 15 FCC Rcd 18354 (2000). Accordingly, we clarify that our ruling is limited to porting within the LATA where the wireless carrier's point of interconnection is located, and does not require or contemplate porting outside of LATA boundaries.

⁷⁶ 47 U.S.C. § 251(b). We anticipate that, as a general matter, enforcement issues regarding both wireless-wireless and wireless-wireline local number portability at this time are likely to be better addressed in the context of Section 208 formal compliant proceedings or related mediations as opposed to FCC-initiated forfeiture proceedings. In this connection, we note that a violation of our number portability rules would constitute an unjust and unreasonable practice under section 201(b) of the Act.

⁷⁷ We note that Verizon has already announced its intention to port numbers without regard to rate centers. See "Verizon and Verizon Wireless Reach Barrier-Free Porting Agreement in Advance of November 24 Deadline," Press Release from Verizon Wireless dated Sept. 22, 2003, available at <http://news.vzw.com/news/2003/09/pr2003-09-22.html>.

areas outside of the 100 largest MSAs, we hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

30. Carriers inside the 100 largest MSAs (or outside the 100 largest MSAs, after the transition period) may file petitions for waiver of their obligation to port numbers to wireless carriers, if they can provide substantial, credible evidence that there are special circumstances that warrant departure from existing rules.⁷⁸ We note that several wireline carriers have already filed requests for waiver.⁷⁹ We will consider these requests separately, and our decision in this order is without prejudice to any potential disposition of these requests.

B. Interconnection Agreements

31. *Background.* In its January 23rd petition, CTIA requests that the Commission confirm that a wireline carrier's obligation to port numbers to a wireless carrier requires only that a carrier release a customer's number to another carrier and assign the number to the new carrier in the Number Portability Administration Center (NPAC) database, which is queried solely to identify the carrier that can terminate calls to the customer. From a practical perspective, CTIA contends, such porting can be based on a service-level porting agreement between carriers, and does not require direct interconnection or an interconnection agreement. Moreover, CTIA argues, because the Commission imposed number portability requirements on wireless carriers pursuant to its authority under sections 1, 2, 4(i), and 332 of the Act, and outside the scope of sections 251 and 252, number portability between wireline and wireless carriers is governed by a different regime than number portability between wireline carriers and is subject to the Commission's unique jurisdiction over wireless carriers.⁸⁰

32. A number of wireless carriers agree with CTIA, arguing that requiring wireless carriers to establish interconnection agreements with wireline carriers from whom they sought to port numbers would delay LNP implementation.⁸¹ Several wireline carriers, however, assert that interconnection agreements for porting are necessary.⁸² SBC, for example, argues that under sections 251 and 252 of the Act, LECs must establish interconnection agreements for porting.⁸³ SBC contends that interconnection agreements guarantee parties their right to negotiate, provide a means of resolving disputes, and allow public scrutiny of agreements.⁸⁴ In addition, some LECs argue that, without interconnection agreements,

⁷⁸ 47 C.F.R. § 1.3, 52.25(e). See also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁷⁹ See e.g., Franklin Telephone Company, Inc. Petition for Waiver, CC Docket Nos. 95-116 (filed Sept. 24, 2003); Intercommunity Telephone Company, LLC Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003); and North Central Telephone Cooperative, Inc. Petition for Waiver, CC Docket No. 95-116 (filed Sept. 24, 2003).

⁸⁰ May 13th Petition at 17-18.

⁸¹ See Sprint Comments on CTIA's May 13th Petition at 16; T-Mobile Comments on CTIA's May 13th Petition at 8; and Virgin Mobile Comments on CTIA's May 13th Petition at 4-5.

⁸² See Missouri Independent Telephone Company Group Comments on CTIA's May 13th Petition; National Telecommunications Cooperative Association Comments on CTIA's May 13th Petition; and SBC Comments on CTIA's May 13th Petition.

⁸³ SBC Comments on CTIA's May 13th Petition at 8.

they have no means to ensure that they will receive adequate compensation for transporting and terminating traffic to wireless carriers.

33. Other LECs, on the other hand, disagree that interconnection agreements are a necessary precondition to intermodal porting. Verizon contends that intermodal porting is not a Section 251 requirement and is therefore not necessary to incorporate wireless-wireline porting into Section 251 agreements.⁸⁵ AT&T questions whether either service level agreements or interconnection agreements are necessary, contending that because such little information needs to be exchanged between carriers for porting, less formal arrangements may be sufficient.⁸⁶ Sprint argues that interconnection agreements are not required for LNP because whether or not a customer ports a number from one carrier to another has nothing to do with the interconnection arrangements two carriers use for the exchange of traffic.⁸⁷ Several LECs urge the Commission to let carriers determine on their own what type of agreement to use to facilitate porting.⁸⁸

34. *Discussion.* We find that wireless carriers need not enter into section 251 interconnection agreements with wireline carriers solely for the purpose of porting numbers. We note that the intermodal porting obligation is also based on the Commission's authority under sections 1, 2, 4(i) and 332 of the Act. Sprint argues that interconnection agreements are not required to implement every section 251 obligation.⁸⁹ Sprint also claims that because porting involves a limited exchange of data (e.g., carriers need only share basic contact and technical information sufficient to allow porting functionality and customer verification to be established), interconnection agreements should not be required here.⁹⁰ We agree with Sprint that wireline carriers should be required to port numbers to wireless carriers without necessarily entering into an interconnection agreement because this obligation can be discharged with a minimal exchange of information. We thus find that wireline carriers may not unilaterally require interconnection agreements prior to intermodal porting. Moreover, to avoid any confusion about the applicability of section 252 to any arrangement between wireline and wireless carriers solely for the purpose of porting numbers, we forbear from these requirements as set forth below.

35. To the extent that the *Qwest Declaratory Ruling Order* could be interpreted to require any agreement pertaining solely to wireline-to-wireless porting to be filed as an interconnection agreement

⁸⁴ *Id.*

⁸⁵ Sprint Comments on CTIA's May 13th Petition at 18; Verizon Comments on CTIA's May 13th Petition at 10.

⁸⁶ AT&T Reply Comments on CTIA's May 13th Petition at 7-8.

⁸⁷ Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint to John Rogovin, General Counsel, FCC (filed Sept. 22, 2003).

⁸⁸ See Association for Local Telecommunications Services Reply Comments on CTIA's May 13th Petition at 3, BellSouth Comments on CTIA's May 13th Petition at 9; and USTA Reply Comments on CTIA's May 13th Petition at 6.

⁸⁹ See note 87.

⁹⁰ Sprint's profile information exchange process is an example of the type of contact and technical information that would trigger an obligation to port. See, Letter from Luisa L. Lancetti, Vice President PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau (filed Sept. 23, 2003); and Letter from Luisa L. Lancetti, Vice President, PCS Regulatory Affairs, Sprint Corp. to John B. Muleta, Chief, Wireless Telecommunications Bureau and William Maher, Chief, Wireline Competition Bureau (filed August 8, 2003).

with a state commission pursuant to sections 251 and 252 of the Act, we forbear from those requirements. First, we conclude that interconnection agreements are not necessary to prevent unjust or unreasonable charges or practices by wireless carriers with respect to porting. The wireless industry is characterized by a high level of competition between carriers. Although states do not regulate the prices that wireless carriers charge, the prices for wireless service have declined steadily over the last several years.⁹¹ No evidence suggests that requiring interconnection agreements for intermodal porting is necessary for this trend to continue.

36. For similar reasons, we find that interconnection agreements for intermodal porting are not necessary for the protection of consumers.⁹² The intermodal LNP requirement is intended to benefit consumers by promoting competition between the wireless and wireline industries and creating incentives for carriers to provide new service offerings, reduced prices, and higher quality services. Requiring interconnection agreements for the purpose of intermodal porting could undermine the benefits of LNP to consumers by preventing or delaying implementation of intermodal porting. We also do not believe that the state regulatory oversight mechanism provided by Section 251 is necessary to protect consumers in this limited instance.

37. Finally, we conclude that forbearance is consistent with the public interest. Number portability, by itself, does not create new obligations with regard to exchange of traffic between the carriers involved in the port. Instead, porting involves a limited exchange of data between carriers to carry out the port. Sprint, for example, notes that to accomplish porting, carriers need only exchange basic contact information and connectivity details, after which the port can be rapidly accomplished.⁹³ Given the limited data exchange and the short time period required to port, we conclude that interconnection agreements approved under section 251 are unnecessary. In view of these factors, we conclude that it is appropriate to forbear from requiring interconnection agreements for intermodal porting.

C. The Porting Interval

38. CTIA requests that the Commission require wireline carriers to reduce the length of the porting interval, or the amount of time it takes two carriers to complete the process of porting a number, for ports from wireline to wireless carriers.⁹⁴ Currently, the wireline-to-wireline porting interval is four business days.⁹⁵ The wireline porting interval was adopted by the NANC in its Architecture and

⁹¹ Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Eighth Report*, FCC 03-150, at 45 (rel. July 14, 2003).

⁹² Certain LECs have expressed concern that without interconnection agreements between LECs and CMRS carriers, calls to ported numbers may be dropped, because NPAC queries may not be performed for customers who have ported their numbers from a LEC to a CMRS carrier. See Letter from Mary J. Sisak, Counsel for Centurytel, Inc. to Marlene H. Dortch, Secretary, FCC (filed Oct. 23, 2003). We do not find these concerns to be justified, however, because the Commission's rules require carriers to correctly route calls to ported numbers. See Telephone Number Portability, CC Docket No. 95-116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236, 7307-08, paras. 125-126.

⁹³ Sprint Comments on CTIA's May 13th Petition at 13-14.

⁹⁴ May 13th Petition at 7.

⁹⁵ Wireline carriers are required to complete the LSR/FOC exchange within 24 hours and complete the port within three business days thereafter. See North American Numbering Council Local Number Portability Selection Working Group Final Report and Recommendation to the FCC, Appendix E (rel. April 25, 1997).